IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI. JUSTICE P.S. NARAYANA

WRIT PETITION Nos.22783 AND 22785 OF 2007

DATED: 22-11-2007

WRIT PETITION No.22783 OF 2007

BETWEEN:

M/s. Padmalaya Travels, Visakhapatnam,
Represented by its Proprietor Sri Ch. Satyanarayana,
S/o Bhavanarshi, 44 years, office situated at No.6,
Palla Apparao Complex, NH5, Old Gajuwaka,
Visakhapatnam

.....Petitioner

AND

The Senior Divisional Commercial Manager,
East Coast Railway, Waltair, Visakhapatnam
and two others

.....Respondents

-

WRIT PETITION No.22785 OF 2007

BETWEEN:

M/s. Sri Sai Travels, Visakhapatnam,
Represented by its Proprietor Mrs. K. Nalini,
W/o Satyanarayana Singh, 43 years, Office situated at
H.No. 25-12-39, Godevari Street, Opp. SBI (Main Branch),
Visakhapatnam-1

.....Petitioner

AND

The Senior Divisional Commercial Manager,
East Coast Railway, Waltair, Visakhapatnam
and two others

.....Respondents

-

-

-

THE HON'BLE SRI. JUSTICE P.S. NARAYANA

WRIT PETITION Nos.22783 AND 22785 OF 2007

COMMON ORDER:

These two writ petitions are filed by M/s. Padmalaya Travels, Visakhapatnam and M/s. Sri Sai Travels, Visakhapatnam. In Writ Petition No. 22783 of 2007, the petitioner prayed for issuance of a writ of mandamus declaring order dated 8-10-2007 of the 1st respondent cancelling the RTSA licence bearing No. WCM/RTSA, dated 13-6-2006 as arbitrary and illegal and over exercise of powers under Sections 60 and 200 of the Indian Railways Act, 1989 (for short, 'the Act') and to consequently direct the respondents to restore the said licence. Likewise, in Writ Petition No. 22785 of 2007, the petitioner prayed for issuance of a writ of mandamus declaring order dated 9-10-2007 of the 1st respondent cancelling the RTSA licence bearing No. WCM/RTSA, dated 13-6-2006 as arbitrary and illegal and over exercise of powers under Sections 60 and 200 of the Act and to consequently direct the respondents to restore the said licence.

The facts appear to be almost similar in both these writ petitions and hence, they are being disposed of finally by a common order.

This Court issued rule nisi on 5-11-2007. Counter affidavits are filed in both the matters and though the mattes are appearing in interlocutory stage, at the request of the counsel on record, they are being disposed of finally. It is also brought to the notice of this Court that as against the impugned orders, the respective petitioners

already preferred appeals before the 3rd respondent and that the same are pending disposal.

In Writ Petition No. 22783 of 2007, it is stated that the petitioner has been granted licence and appointed as Railway Traveller's Service Agent in 1995 and since then it has been doing business in the name and style of M/s. Padmalaya Travels; that the licence was renewed from time to time and the latest was in 2006 i.e., on 13-6-2006 which was for a period of three years.

It is further stated that according to the terms of the licence issued to it, as an agent, the petitioner can collect not more than Rs.25/- for higher classes and Rs.15/- for second/sleeper class reservation; that in view of introduction of TATKAL scheme, the Railways itself prescribed rates for TATKAL quota; that in season the Tatkal rate for higher class is Rs.300/- over and above the fare and for sleeper class Rs.150/- over and above the fare and that in other cases, Rs.150/- for higher class and Rs.75/- for sleeper class.

It is also stated that when the passenger inclines to have reservation, as per the practice, advance amount is to be paid to the petitioner so that it would compensate cancellation charges, otherwise, if the passenger ultimately withdraws journey, it will be put to financial loss; that the licence issued is silent in this aspect and also about the cancellation procedure adopted by the agents; that the petitioner used to receive phone calls for the purpose of reservations and accordingly reserve the tickects; that the requisitions for reservations would have to be submitted at the counter for the purpose of reservations and that likewise at the time of cancellation also, the petitioner cannot keep the requisitions for cancellations. It can only have the cancelled ticket issued by the railways for its records.

It is further stated that similarly situated agents like the petitioner connived with the Vigilance Department of the Railways and Railway Protection Force personnel which have no authority to enter into its premises but conducted sudden inspection of the records and alleged certain illegalities and required it to submit explanation vide show cause notice dated 17-7-2007. The petitioner submitted its explanation. The 1st respondent without considering the explanation of the petitioner found that it is liable for action under Rail Travellers' Service Agents Rules, 1985 (for short, 'the Rules') and Amendment Rules, 1987 and in view of the powers under Sections 60 and 200 of the Act cancelled the licence with immediate effect from the date of the order. It was also observed in the order that the petitioner can prefer appeal within 30 days from the date of the order.

It is the case of the petitioner that Section 60 of the Act falls within the ambit of Chapter VIII of the Act, which deals with carriage of passengers. Contravention of any rule made thereunder shall be punishable with fine not exceeding Rs.500/-. Section 60 (1) enables the Central Government to make rules for the purpose of this chapter and that admittedly the Rules and Amendment Rules, 1987 were made under this section. According to the petitioner provisions of Section 200 of the Act do not empower the 1st respondent to cancel its licence. More over, the sudden or surprise check by the Vigilance and RPF personnel is not supported by the terms and conditions of the licence. It is the case of the petitioner that from the show cause notice, it is clear that the authorities have decided to cancel its licence and calling for explanation is only an empty formality. Since the petitioner has not attended to the formalities demanded by the Vigilance Department and RPF personnel, the above irregularities

have been foisted against it. As the petitioner is not the staff of the railways amenable to Vigilance Department, the Deputy Chief Vigilance Officer (Ticket) is not an authorized officer to inspect its record; that copy of the report of the inspection team was not supplied to the petitioner and that it has maintained all the records stipulated under the conditions of licence and at no point of time contravened the same and the order cancelling its licence is highly illegal. Hence the writ petition.

In Writ Petition No. 22785 of 2007, it is stated that the petitioner has been granted licence and appointed as Railway Traveller's Service Agent in 1998 and since then it has been doing business in the name and style of M/s. Sri Sai Travels, that the licence was renewed from time to time and the latest was in 2006 i.e., on 13-6-2006 which was for a period of three years. The other facts need not be reiterated since they are almost similar and identical to the facts in Writ Petition No. 22783 of 2007.

Though separate counter affidavits are filed, substantially the stand taken in both the counter affidavits appears to be the same. While denying several of the allegations, in both the counter affidavits, a specific stand had been taken that only after following the procedure, the show causes notices had been issued and the impugned orders have been passed.

In reply to the averments made in Writ Petition No. 22783 of 2007, it is stated in the counter affidavit of that writ petition that the action of the 1st respondent is in terms of the licence conditions and also the Rules. Rule 6(a) of the Rules authorizes the 1st respondent to cancel the licence by issuing show cause notice for violation of any of the conditions of the licence and in exercise of the said power only show cause notice had been issued. It is stated that the petitioner

had not offered sufficient explanation for collecting an amount of Rs.620/- which is excessive; that the receipt does not indicate the heads under which the said amount was collected; that issuance of advance receipt and final receipts are not permissible without indication of the charges collected; that the petitioner has admitted in its explanation with regard to improper maintenance of the registers and assured the 1st respondent that it would be more careful in future by taking precautions and that the explanation submitted by it clearly proves that it acted against the terms and conditions of the licence. It is further stated that the 1st respondent passed the impugned order after taking into account the explanation submitted by the petitioner; that the impugned order is in accordance with the rules and that the petitioner has approached the Court without exhausting the remedy of preferring an appeal to the General Manager within 30 days from the date of the order. It is the case of the respondents that the 1st respondent who issued the licence has got power to terminate the same after following due procedure of law. Section 60 authorises the Central Government or the competent authority to frame rules and Section 200 of the Act confers validity to the Rules which were in existence prior to the enactment of the Act and that the Rules were amended several times. It is further stated that the activities of the petitioner being a travel agent, Vigilance Department and RPF personnel have every right and authority to check any illegal or unlawful activity in purchasing or selling of tickets and that the inspection done was in exercise of condition XIII of the licence and clause XIII of Rule 5 of the Rules. The allegation levelled by the petitioner that they have demanded certain formalities to be observed by the petitioner and when it did not heed to their demands, the irregularities were framed against it is also denied. It is also stated

that the petitioner itself is responsible for cancellation of the licence for its illegal acts.

Likewise, in Writ Petition No. 22785 of 2007, several averments made in the affidavit filed in support of the writ petition are denied. In reply to the averments made in paras 5 and 6 of the affidavit, it is stated that the action of the 1st respondent is in terms of the licence conditions and also the Rules. Rule 6(a) of the Rules authorizes the 1st respondent to cancel the licence by issuing show cause notice for violation of any of the conditions of the licecne and in exercise of the said power only show cause notice had been issued. It is stated that the petitioner has admitted in its explanation with regard to improper maintenance of the registers and assured the 1st respondent that it would be more careful in future by taking precautions and that the explanation submitted by it clearly proves that it acted against the terms and conditions of the licence. It is further stated that the 1st respondent passed the impugned order after taking into account the explanation submitted by the petitioner, that the impugned order is in accordance with the rules and that the petitioner has approached the Court without exhausting the remedy of preferring an appeal to the General Manager within 30 days from the date of the order. It is the case of the respondents that the 1st respondent who issued the licence has got power to terminate the same after following due procedure of law. Section 60 authorises the Central Government or the competent authority to frame rules and Section 200 of the Act confers validity to the Rules which were in existence prior to the enactment of the Act and that the Rules were amended several times. It is further stated that the activities of the petitioner being a travel agent, Vigilance Department and RPF personnel have every right and authority to check any illegal or

unlawful activity in purchasing or selling of tickets and that the inspection done was in exercise of condition XIII of the licence and clause XIII of Rule 5 of the Rules. The allegation levelled by the petitioner that they have demanded certain formalities to be observed by the petitioner and when it did not heed to their demands, the irregularities were framed against it also denied. It is also stated that the petitioner itself is responsible for cancellation of the licence for its illegal acts.

These are the respective stands taken by the parties. The main contention advanced by the learned counsel for the petitioners is that the impugned order cannot be sustained since the concerned authority has no authority or jurisdiction to make an order of cancellation either under Section 60 of the Act or under the Rules as amended up to date. The learned counsel would maintain that when the statutory provision viz., Section 60 of the Act as such does not confer such power of cancellation, it would be a futile exercise to rely upon the rules.

Per contra, learned Standing Counsel representing the Railways placed strong reliance on Section 60 of the Act and also Section 200 of the Act and further placed before this Court the Authorisation Rules, 1985 as amended by the Rules of 2001 and would maintain that in the light of the same, the power, authority or jurisdiction of the competent authority cannot be doubted in any way. Even otherwise, the petitioners are having an effective remedy by way of appeal and hence, the writ petitions cannot be maintained, especially in the light of several factual controversies involved in these matters.

Heard the counsel. The respective stands taken by the parties already had been referred to supra. The rules specified above as

amended in 2001 are as hereinunder:

"S.O. 1220 (E) – In exercise of the powers conferred by Section 60 read with Section 200 of the Railways Act, 1989 (24 of 1989), the Central Government hereby makes the following rules further to amend the Authorisation of Rail Travellers Service Agents Rules, 1985, namely :--

1. (1) These Rules may be called the Authorisation of Rail Travellers Service Agents (Amendment) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Authorisation of Rail Travellers Service Agents Rules, 1985. (A) in rule 5---

(a) for clause (ii), the following shall be substituted, namely:-

"(ii) The licence shall not be transferable:

Provided that in case the licencee dies, the licence may be transferred to his legal heir(s) for the unexpired period of licence by the competent authority and the said legal heir(s) is/are also eligible to apply for renewal of said licence in accordance with the provisions of rule 7 of these rules".

(b) after clause (xiv), the following clause shall be inserted, namely:--

"(xv) Zonal Railways shall specify the general working conditions within the frame work of these rules".

(B) In rule 6, for clause (a) the following shall be substituted namely:-

"(a) Suspension/cancellation of the Licence:-- Without prejudice to any other provisions under the Railways Act, 1989, and these rules the competent authority shall have the right to suspend or cancel at any time the licence after giving due notice for violation or for ceasing to fulfil any of the conditions under these rules or any other rule or regulation applicable with regard to purchase of ticket and securing reservation or for any other reason which the competent authority deems to be expedient in the public interest to do so.

In case of suspension of licence, the licence and identity cards shall be surrendered to the competent authority within seven days of issuance of the order of suspension failing which action shall be initiated to terminate the licence:

Provided that no action under this rule shall be taken unless an opportunity to show cause is given to the agent."

The provisions of Section 60 of the present Act correspond to Section 47 of the repealed act i.e., the Indian Railways Act, 1890. Section 60 of the Act dealing with the power to make rules reads as under:

"**60. Power to make rules in respect of matters in this Chapter** – (1) The Central Government may, by notification, make rules to carry out the purposes of the Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the convenience and accommodation (including the reservation of seats or berths in trains) to passengers;

(b) the amount of refund for the cancellation of a ticket;

(c) the circumstances under which change of names of passengers, having reserved seats or berths, may be permitted;

(d) the carriage of luggage and the conditions subject to which luggage may be kept in the cloak rooms at the stations;

(e) diseases which are infectious or contagious;

(f) the conditions subject to which a railway administration may carry passengers suffering from infectious or contagious diseases and the manner in which carriages used by such passengers may be disinfected;

(g) generally, for regulating the travelling upon, and the use, working and management of the railways.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which shall not exceed five hundred rupees.

(4) Every railway administration shall keep at every station on its railway a copy of all the rules made under this section and shall also allow any person to inspect it free of charge.

Section 200 of the Act dealing with repealing and saving reads as under:

"200. **Repeal and saving –** (1) The Indian Railways Act, 1890 (9 of 1890) is hereby repealed.

(2) Notwithstanding the repeal of the Indian Railways Act, 1980 (9 of 1890) (hereinafter referred to as the repealed Act)—

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification inspection, order or notice made or issued, or any appointment or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any complaint made to the Railway Rates Tribunal under sub-section (1) of Section 41 of the repealed Act but not disposed of before the commencement of this Act and any complaint that may be made to the said Tribunal against any act or omission of a railway administration under the repealed Act shall be heard and decided by the Tribunal constituted under this Act in accordance with the provisions of Chapter VII of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal."

Certain submissions were made that the Rules on which the Standing Counsel for the Railways has placed reliance are themselves beyond the rule making power conferred by the provisions of the Act.

It is needless to say that the rules as such have not been questioned in these writ petitions. Be that as it may, it is stated that the appeals were filed by the petitioners before the 3rd respondent and the same are pending disposal.

In view of the same, the writ petitions are disposed of directing the 3rd respondent to dispose of the appeals preferred by the respective writ petitioners within a period of eight weeks from the date

of receipt of this order and till then, the operation of the impugned orders in both these writ petitions are suspended. No order as to costs.

_____

(P.S. NARAYANA RAO, J)

Dated: 22-11-2007
ks

LR Copy to be marked.